IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.77595-M of 2006
Date of Decision:- 02.05.2007

Abdul Hamid & anr. ....Petitioner(s)

through
Mr.S.S.Rana, Advocate with
Mr.C.S.Rana, Advocate.

vs.

C.B.I. ....Respondent(s)

through
Mr.R.K.Handa, Special PP.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

The prayer in this petition is to grant regular bail to the petitioners in case F.I.R.No.RC 1(S)/2006/SCR-III/New Delhi dated 10.5.2006 registered under Section 67 of the Information Technology Act, 2000, Sections 3, 4, 5, 6, 7 of Immoral Traffic (Prevention) Act, 1956 and Sections 376, 292, 120-B, 34 of Ranbir Penal Code (corresponding local police F.I.R.No.20/2006 dated 14.3.2006 of P.S.Shaheed Gunj, Srinagar).

[2] The petitioners who are husband and wife, were arrested on 9.5.2006 and 29.4.2006 respectively and are in custody since then.

[3] The facts may be briefly noticed.

[4] On 14.3.2006, F.I.R.No.20/2006 was registered at Police Station Shaheed Gunj, Srinagar, under Section 67 of the Information

Technology Act, 2000, *inter alia,* alleging that a boy handed over a compact disc to a fruit vendor which contained pornographic material including photographs of a girl of the locality. The fruit vendor allegedly handed over the CD to Samaj Sudhar Committee which, in turn, handed it over to the police, resulting into registration of the F.I.R. by the police at Srinagar. The girl appearing in the CD was identified as W-1 and based upon her statement before the J&K police, it was allegedly revealed that petitioner No.2 (Sabeena) was running a 'prostitution ring' involving several girls including W-1 and various influential politicians, bureaucrats, senior police officers etc. were involved in the said sex racket.

[5] The issue having been sensitized by the Media, J&K High Court Bar Association filed a Public Interest Litigation and pursuant to the direction issued therein by the J&K High Court, statements of some witnesses were recorded in the presence of the District & Sessions Judge, Srinagar. Thereafter, vide notification dated 9.5.2006, the investigation of the case was entrusted to the CBI which registered the present F.I.R. On a separate petition filed before the Hon'ble Supreme Court, the trial of the case has been transferred to the Court of learned District & Sessions Judge, Chandigarh.

[6] As noticed above, petitioner No.2 was accused of running a 'prostitution racket' and various 'influential persons' were allegedly her customers. Petitioner No.1, who is husband of petitioner No.2, allegedly helped and conspired with his wife in running the said racket.

[7] Though it is not desirable or expedient for this Court to express any views in relation to the merits of the case, more so when the formal trial proceedings have started, however, it appears from the material

on record that the girls allegedly involved by petitioner No.2 in the prostitution business (except W-1) were major. It further appears that Section 376 of the Ranbir Penal Code has been attracted primarily for the reason that W-1, according to CBI, is a minor, though this fact is seriously contested by learned counsel for the petitioners.

[8] There is, however, no dispute that pursuant to the time bound directions issued by this Court on February 28, 2007, the statement of W-1 (the alleged minor girl) has already been recorded and she has been cross-examined at length. It is informed that she has also been sent back to J&K State.

[9] It is also not in dispute that the petitioners' co-accused including some politicians, senior bureaucrats, police officers, professionals etc. have already been enlarged on regular bail by this Court vide a self-speaking order dated November 22, 2006 (Annexure P-14).

[10] It is also an admitted fact that the petitioners are now in custody for the last one year and the C.B.I. has cited 99 witnesses out of whom only one witness, namely, W-1 has been examined so far. There is no serious dispute amongst learned counsel for the parties that after the transfer of trial to Chandigarh, the C.B.I. has taken effective measures towards safety and protection of the witnesses, therefore, the petitioners are apparently not in a position to exert influence upon the prosecution witnesses or tamper with its evidence.

[11] While granting bail to the petitioners' co-accused, this Court took specific notice of the fact that an individual should not be deprived of his liberty even before his conviction and sentence and that there was nothing to suggest “as to what purpose, or what part of the collective

conscience of society would be assuaged by incarcerating the petitioners any further."

[12] There is hardly any denial to the fact that despite its earnest efforts, to expedite the trial proceedings and having regard to the total witnesses to be examined and the voluminous records, the learned trial Court is likely to take considerably long period to conclude the trial.

[13] The petitioners, as it appears, do not belong to the influential class of society. Whether or not an offence under Section 376 of the Ranbir Penal code is committed, is a debatable issue. For rest of the alleged offences, the petitioners' co-accused are already enlarged on bail.

[14] In these circumstances and for the reasons afore-stated, as also for the reasons already given by this Court vide order dated November 22, 2006 passed in Crl.Misc.No.62395-M of 2006 (**Anil Sethi, Advocate vs. C.B.I.**) but without expressing any views on the merits of the case, lest it should prejudice either of the parties, this petition is allowed. The petitioners are directed to be released on bail subject to their furnishing bail bonds to the satisfaction of the trial Court.

May 02, 2007 **(SURYA KANT)**
poonam **JUDGE**